

remarkable cooperation on judicial nominations despite years of intensified Republican partisanship and unilateralism.

Over the past 2 weeks, I have shared with the Senate several disappointing developments regarding judicial nominations: The Pickering recess appointment, the renomination of Claude Allen, and the theft of Democratic offices' computer files by Republican staff. In spite of all those affronts, Senate Democrats cooperated to confirm a nominee last week and are cooperating to confirm another district court nominee today. We do so without the kinds of delays and obstruction that Republicans used with President Clinton's judicial nominees.

Last week, I discussed the recess appointment of Judge Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit, which was President Bush's most cynical and divisive appointment to date. That appointment is without the consent of the United States Senate and is a particular affront to the many individuals and membership organizations representing African-Americans in the Fifth Circuit who have strongly opposed this nomination. Never before had a judicial nomination rejected by the Judiciary Committee after a vote been resubmitted to the Senate, but this President took that unprecedented step last year. Never before has a judicial nomination debated at such length by the Senate, and to which the Senate has withheld its consent, been the subject of a presidential appointment to the Federal bench. The Pickering recess appointment is another dangerous step down the Republican's chosen path to erode judicial independence for the sake of partisanship and their ideological court-packing efforts.

The second disappointing development I spoke about last week was the renomination of Claude Allen as a nominee to the fourth Circuit. Two weeks ago, the President sent the nomination of Claude Allen back to the Senate. From the time this nomination was originally made to the time it was returned to the President last year, the Maryland Senators have made their position crystal clear. This Fourth Circuit vacancy is a Maryland seat and ought to be filled by an experienced, qualified Marylander. Over the Senate recess, the White House had ample time to find such a nominee. This refusal to compromise is just another example of the White House engaging in partisan politics to the detriment of an independent judiciary.

Third, last week, I also mentioned with disappointment the ongoing fallout from the cyber theft of confidential memoranda from Democratic Senate staff. This invasion was perpetrated by Republican employees both on and off the committee. As revealed by the chairman, computer security was compromised and, simply put, members of the Republican staff took things that did not belong to them and passed

them around and to people outside of the Senate. This is no small mistake. It is a serious breach of trust, morals, the standards that govern Senate conduct and possibly, criminal laws. We do not yet know the full extent of these violations. But we do need to repair the loss of trust brought on by this breach of confidentiality and privacy if we are ever to be able to resume our work in the spirit of cooperation and mutual respect that is so necessary to make progress.

This is an administration that promised to unite the American people but that has chosen time and again to act with respect to judicial nominations in a way that divides us. This is an administration that squandered the goodwill and good faith that Democrats showed in the aftermath of September 11, 2001. This is an administration that refused to acknowledge the strides we made in filling 100 judicial vacancies under Democratic Senate leadership in 2001 and 2002 while overcoming anthrax attacks and in spite of Republican mistreatment of scores of qualified, moderate judicial nominees of President Clinton.

Democratic cooperation with the President's slate of judicial nominees has been remarkable in these circumstances. With the overall cooperation of Senate Democrats, which partisan Republicans are loath to concede, this President has achieved record numbers of judicial confirmations. Despite the attacks of September 11 and their aftermath, as of today, the Senate will have confirmed 171 of President Bush' nominees to the Federal bench. This is more judges than were confirmed during President Reagan's entire first 4-year term. Thus, President Bush's 3-year totals rival those achieved by other Presidents in 4 years. That is also true with respect to the nearly 4 years it took for President Clinton to achieve these results following the Republicans' taking majority control of the Senate in 1994.

The 69 judges confirmed last year exceeds the number of judges confirmed during any of the 6 years from 1995 to 2000 when Republicans controlled the Senate during the Clinton Presidency, years in which there were far more vacant Federal judgeships than exist today. Among those 69 judges confirmed in 2003 were 13 circuit court judges. That exceeds the number of circuit judges confirmed during any of 1995, 1996, 1997, 1999, and 2000, when a Democrat was President.

The Senate has already confirmed 30 circuit court judges nominated by President Bush. This is a greater number than were confirmed at this point in the presidencies of his father, President Clinton, or the first term of President Reagan. Vacancies on the Federal judiciary have been reduced to the lowest point in two decades and are lower than Republicans allowed at any time during the Clinton Presidency. In addition, there are more Federal judges serving on the bench today than at any time in American history.

This week, the chairman of the Senate Judiciary Committee will hold a third hearing for circuit court nominees. Traditionally, the number of nominees who have received hearings and who are confirmed in a Presidential election year has been lower than in other years. In 1996, only four circuit court nominees by President Clinton received a hearing from the Republican Senate majority all year, and it took until July 31 to have a hearing for the third circuit court nominee. By that standard, Chairman HATCH has now moved seven times more quickly than he did for President Clinton's nominees in 1996.

In 2000, only five circuit court nominees by President Clinton received a hearing from the Republican Senate majority. Of course, two of those outstanding and well-qualified nominees in 2000 were never allowed to be considered by the committee or the Senate. By contrast, as of tomorrow we will have held hearings for three circuit court nominees. By the standard Republicans set in 1996 and 2000, we would be done for the entire year.

I congratulate the Democratic Senators on the committee for showing a spirit of cooperation and restraint in the face of a White House and Republican majority that so often has refused to consult, compromise or conciliate. I regret that our efforts have not been fairly acknowledged by partisan Republicans and that this administration continues down the path of confrontation. While there have been controversial nominees whom we have opposed as we exercise our constitutional duty of advice and consent to lifetime appointments on the Federal bench, we have done so openly and on the merits.

For the last 3 years I have urged the President to work with us. It is with deep sadness that I see that this administration still refuses to accept the Senate's shared responsibility under the Constitution and refuses to appreciate our level of cooperation and achievement.

That we are proceeding to confirm Mark Filip today is another example of extraordinary Democratic cooperation to fill vacancies in the Federal judiciary, despite the Republicans' consistent and unprecedented attacks. Unfortunately, Mark Filip is another young, Federalist Society member whose record raises concerns, just as the record of far too many of President Bush's judicial nominees.

First, Mr. Filip is only 37 years old. He has been out of law school less than 12 years and just a decade ago he was clerking across the street for Justice Scalia. Second, his record demonstrates a partisan, political background. Mr. Filip worked as a volunteer Republican election monitor in Broward County, Florida during the manual recount of ballots in the contentious 2000 election. Mr. Filip has also made several contributions to Republican candidates and political action committees. While in law school,